IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1496 OF 2004
IN
APPEAL FROM ORDER NO.1055 OF 2004

B.J.Gupta & others ...Applicants

Vs.

Arun Chabrria ...Respondent

Mr. Rahul Rao with Ms Priti Gada i/b Mr.Ravindra Joshi for the Applicants
Mr.K.Mohankumar for the Respondent.

CORAM: A.S.OKA, J.
DATED: JANUARY 31,2005.

P.C.:

1. Rule. Respondent waives service. Civil Application is taken up forthwith for hearing.

2. The Appellants are the original Defendants in the suit filed by the Respondents. The prayers made in the Notice of Motion for temporary injunction taken out by the Respondent-Plaintff which are granted by the Trial Court read thus :

(a) Pending the hearing and final disposal of suit Defendants through themselves their servant, and agents be restrained by a temporary order and injunction of this Hon'ble Court restraining the Defendants from obstructing the plaintiff his agents, servants, licencee and assigns from parking vehicle in the compound of Hema Industrial Estate situated at plot No.A-1, Majaswadi, Opp. Meghwadi Police Station, Jogeshwari (East), Mumbai;

(b) Pending the hearing and final disposal of the suit the Defendants through themselves, their agents and servants be restrained by an order and injunction of this Hon'ble Court from disconnecting stopping and/or reducing the

water supply in the Plaintiff's Units at Hema Industrial Estate, in Plot No.A-4, Majaswadi, Opp.Meghwadi Police Station, Jogeshwari (East), Mumbai.

3. The learned Counsel for the Appellants submitted that a co-operative society has been duly registered on 16th April 2003. He submitted that the Appellants were Office Bearers and members of the managing committee of the proposed co-operative society. He, therefore, submitted that there was no question of granting any injunction against the Appellants in the Notice of Motion. He submitted that the learned Trial Judge has not considered the case made out by the Appellants on merits and no reasons are assigned for granting temporary injunction in terms of prayer clauses (a) and (b) of Notice of Motion. On the last date he has tendered on record an Affidavit filed by the Appellant No.2 for himself and another Appellants. Relying upon the said Affidavit he submitted that the impugned order deserves to be stayed.

4. The learned Counsel for the Respondent-Plaintiff states that a new case is being made out by the Appellants in this Court. He submitted that there was no stay operating to the impugned order for last more than three months and a Contempt Notice of Motion has already been taken out by the Respondent as the Appellants have committed breach of the said order. He submitted that in view of the said position, no case is made out for grant of stay.

5. I have considered the rival submissions. In paragraph

Nos.3 and 4 of the Affidavit dated 24th January 2005 the Appellants have stated as under :

> 3) I say that we were the committee members of the Hema Industrial Estate Premises Co-operative Society (Proposed) Ltd. During that time the said Proposed society has passed the resolution dated 5th November 2001 and as per clause No.6, it was resolved that the defaulter member and/or who has not cleared the dues of the society will not be allowed to park their vehicle in side the compound of the society. The Society has been registered on 16th April 2003. Thereafter the new committee of the said Registered Society has taken charge and passed their resolution in respect of the parking the vehicle inside the compound of the society. I say that after the Registration of the Society, it is the New Registered Society and not the Appellants obstructing the Respondent for parking his Vehicle inside the Compound of the society in accordance with its Resolution dated 21st June 2003. I say that at the time of passing of the impugned order, it is the registered Society by their resolution not allowing the Respondent for parking his Vehicle inside of the compound of the society. I say that the Respondent has challenged the said Resolution in the Co-Operative VIth Court being Dispute No.402 of 2004.
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> 4) I say that we, all the Appellants, are not personally obstructing the Respondent for parking his personal Vehicle inside the compound of the society. I say that we have no authority now to obstruct the Respondent for parking his vehicle in the compound of the society.

6. Thus, the Appellants have made a categorical statement that they are not personally obstructing the Respondent for parking his personal vehicle inside the compound of the society and in fact they have no authority to obstruct the Respondent for parking his vehicle in the compound of the society. In the said Affidavit it is stated that a

resolution has been passed on 21st June 2003 by the registered society on the basis of which the Respondent cannot park the vehicle inside the compound of the society and the Respondent has challenged the said resolution by filing a Dispute in the co-operative Court.

7. In the light of categorical assertions made in the Affidavit dated 14th January 2005, order in terms of prayer clauses (a) of the Notice of Motion made by the Respondent deserves to be stayed. The Appellants are no longer Office Bearers or members of the Managing Committee of the registered society and therefore they have stated that there is no question of they obstructing or preventing parking of the vehicle in the compound of the society.

8. So far as prayer clause (b) of the Notice of Motion is concerned, as the Appellants are no longer incharge of the affairs of the society, obviously, they have no right to disconnect or reduce the water supply to the unit of the Respondent.

9. In this view of the matter till the disposal of the Appeal, there will be stay in terms of prayer clause (a) of this Application.

10. Pendency of this Appeal will not operate as stay to the proceeding of the suit. The Trial Court will proceed further with pending suit. It is also made clear that the proceedings of Contempt Notice of Motion taken out by the Respondent are not stayed.

Judge.